

## **Pavement Through the Prairie, Wheels in the Wetlands: The battle over a road in Lawrence, Kansas**

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### **INTRODUCTION**

On April 22, 1970, the United States celebrated its first Earth Day. Across the nation, Americans joined together, spoke and celebrated Mother Earth. On that day, 1500 colleges held Earth Day teach-ins. Others gathered in churches, temples, and city parks. Eventually, the celebrations involved millions of Americans. Designed by Senator Gaylord Nelson of Wisconsin, who had noted the effectiveness of the civil rights protests of the 1960's, Earth Day was designed to be an "environmental teach-in," which represented a federally approved and nationally organized "grassroots movement" aimed solely at cultivating public awareness of the environment.<sup>1</sup>

Earth Day coincided with the birth of national policies created in the late 1960's and early 1970's that focused solely on the consideration and protection of the environment. During the presidency of Richard Nixon, the federal government increasingly regulated environmental concerns via two significant mechanisms: the National Environmental Policy Act (1969), and the Environmental Protection Agency (1970). The creation of these institutions constituted a federal statement that environmental issues had become a national priority. At the same time public officials in Washington wrote legislation

that recognized the environment as a critical national issue, historian Ann Vileisis argues, "... citizen activists in their communities dealt with broad choices facing the society at large: to embrace boundless growth with all its side effects or to protect remaining natural values before they were lost."<sup>2</sup> As a result of the space program, the first images of planet earth circulated in newspapers and magazines, serving as poignant evidence of human's place within the environment, and for the first time, people could visualize their largest home, planet earth, and conceptualize their place within the biosphere and ecosystems.

In Lawrence, Kansas, home of the University of Kansas and Haskell Indian Nations University, however, the first Earth Day events were overshadowed by civil rights protests at the University of Kansas. Just two days before, amid a series of racial protests, an anonymous individual set fire to the University of Kansas Student Union. With the community under a 7PM mandatory curfew, many of Lawrence's first Earth Day events were cancelled.

Despite these setbacks, KU hosted a six-person Earth Day panel that included professors of economics, political science, geography, architecture and business. The conversation centered on the how to resolve environmental

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<sup>1</sup> Adam Rome, "The Genius of Earth Day." *Environmental History*. (2010) 15 (2): 194.

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<sup>2</sup> Ann Vileisis, *Discovering the Unknown Landscape: A History of America's Wetlands*. Washington, D. C.: Island Press. 1999. 228.

problems and each individual offered a solution given their academic and professional backgrounds. Economics professor Darwin Daicoff suggested that local government should incentivize environmental consciousness through tax policy. Political science professor Herman Lujan considered this solution naïve, stating, “In a representative majoritarian society, the government structure simply reflects the community.”<sup>3</sup> Richard Pollay, assistant professor of business at the university agreed, conceding that it was unlikely that such policies would reduce environmental problems since, “sophisticated and expensive political campaigns depend on industrial sources for funding.”<sup>4</sup> While panelists disagreed over the appropriate solutions, one fact remained unquestioned, environmental problems were “a natural consequence of the competitive market.”<sup>5</sup> On this first Earth Day, Lawrence’s environmental panel agreed that the natural features of the capitalistic marketplace and democratic polity were the root source of environmental problems in America.

In many ways, this conversation foreshadowed an environmental debate that would concern the city of Lawrence for decades to come, over a project known as the South Lawrence Trafficway. This proposed 15-mile arterial highway became the subject of controversy in 1986, when environmentalists began to protest its projected path through a virgin tallgrass prairie and several acres of wetlands held to have environmental, historical and cultural significance for important segments of the community. Two sides quickly formed in the debate

over the South Lawrence Trafficway: those who valued the land for economic gain, and those who valued the land.

The two sides of the Trafficway debate represented conflicting ideologies, which had historically specific conditions that shaped the assumptions, values and the tactics available to achieve their goals. As Lawrence’s Earth Day panel discussed, those who would economically benefit from the construction of the trafficway—especially real estate developers and local businessmen—had significant influence in the local community. Their viewpoint represented the ideology of classic American liberalism with roots in the 1940’s and 1950’s American housing boom. These individuals enjoyed the favor of local government, which promoted the South Lawrence Trafficway as a means to reduce traffic and facilitate planned growth within the community. Those against the trafficway, on the other hand, took advantage of post-Earth Day environmentalism and national acts like the National Environmental Policy Act, working tirelessly to stall the road’s construction. By 1993, during a resurgence of national interest in environmental justice, and an effort to assert its cultural identity, Haskell Indian Nations University joined the environmentalists’ struggle using similar tactics to stall and re-route the road.

This paper will argue that the story of the South Lawrence Trafficway reveals a system that favors development over preservation, despite the agencies and processes that were created in the late 1960’s and 1970’s specifically to protect environmental and historic landmarks. In the system that exists, the burden for preservation of ecologically, historically or culturally valuable landscapes falls on the shoulders of environmentalists and interest groups.

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<sup>3</sup> “Environment In Spotlight at KU Event,” *Lawrence Journal World*. 22 April 1970, p. 2.

<sup>4</sup> Ibid.

<sup>5</sup> Ibid.

Our political and social institutions prioritize development seeing economic growth as a natural force that should continue unless an opposing party can provide a compelling reason to halt it. This dynamic is clearly visible in the story of the South Lawrence Trafficway, where, despite the existence of federal processes designed to protect sensitive landscapes, the project's opponents found themselves forced to work constantly to prove that the environmental, historical and cultural significance of such landscapes outweighed the value of growth.

The first chapter establishes the ideological history of development and urban expansion in the United States, beginning with the post-World War II housing boom. It examines a wide variety of sources, reading city planning documents in light of sociological theories that suggest that the prioritization of growth and development are embedded in our political systems from local government to federal policies. Opinion pieces written by local media mogul Dolph Simons, Jr. during this era represent the business-interests within the community and indicate that developers assumed that these interests would be protected.

The second chapter highlights the efforts made by environmentalist groups to protect two different ecosystems threatened by the bypass from 1986-1990. It sets up Lawrence's history as a politically informed community of scientists and presents the value of the Baker Wetlands and Elkins Prairie. This chapter discusses several federal agencies and acts established in the 1970's to protect the environment, showing that the burden of proving significant value falls heavily to interest groups. The story of the Elkins Prairie and Baker Wetlands shows how our systems inherently favor

development and traces how environmentalists respond to these systems through protests and quests to alter public opinion through spectacle and the media. And eventually, when these approaches fail, it demonstrates that environmental issues often end up in the courts.

By the 1990s, the scope of the South Lawrence Trafficway controversy had grown to include issues of historical and spiritual significance. As national politics prioritized questions of environmental justice in the wake of President Bill Clinton's Executive Order 12898, Haskell Indian Nations University became a key player in the struggle over the trafficway. Haskell characterized its opposition as part of a movement to renew pride in Native American history and identity. Members of the Haskell community argued that the placement of a road through an area with such complex history was unjust, and that the agencies conducting the project had not adequately considered these values. The third chapter argues that, as with earlier clashes, developers' attitudes and efforts during this era changed very little in the face of new challenges to their project. In comparison, Haskell and environmental groups allied to enforce their position, and today, still continue to successfully to stall the project.

Because of the duration of this controversy, the number of interest groups involved, a history of local and national media coverage and the South Lawrence Trafficway's position as a subject of federal and local bureaucracies, its history has been exhaustively documented and there is abundant source material. Rather than include all of this vast range of primary and secondary source documents, this project highlights several key documents, stemming from

important moments in the conflict and analyzes them to understand each party's values, history and tactics. In particular, this paper studies city-planning documents to reveal how local government prioritized growth, and draws on secondary source material from environmental historian Adam Rome, sociologist Harvey Molotch and urban theorist Jane Jacobs. Dolph Simons, Jr. is used as a representative of business interests. Although it would be desirable to know more about the ideas of other business leaders, Simons' voice is readily accessible from his editorials in the *Lawrence Journal World*. Other sources I analyzed include unpublished articles, pamphlets, legal records, and newspaper articles; in every case, I tried to identify the assumptions, methods and biases of the authors. Finally, I have benefitted from the 2001 work of a University of Kansas Law student, Kelly Lynn, who published a JD thesis on this subject entitled, "Seeking Environmental Justice for Cultural Minorities: The South Lawrence Trafficway of Lawrence, Kansas." Drawing from these sources, Lynn's thesis discusses the legal inadequacies of the National Environmental Policy Act and the National Historic Preservation Act as regards the South Lawrence Trafficway.

Before launching into the story, some readers may wonder about the land that was the basic subject of contention. The proposed South Lawrence Trafficway is a 15-mile highway that connects Interstate-70 in west Lawrence to Kansas Highway-10 in east Lawrence, bypassing the city to the south. In its projected path stood two patches of land that represent some of Lawrence's most-valued ecological resources: an 80 acre plot of virgin prairie known as the Elkins Prairie and 640 acres of riparian wetlands known

as the Baker wetlands. Historically, students and teachers from local schools, as well as the University of Kansas, Baker University, Haskell Indian Nations University used these landscapes as "living labs" with which to study rare plant species and wetland ecology. As later became clear, the Baker Wetlands had a longer social and educational history; it had been partially filled in the late 1880's to be farmland for young Native American boarding students at the Haskell Institute. In the 1950's, when Haskell no longer used the land for agricultural purposes, ownership moved from the Bureau of Indian Affairs to the United States Department of Health, Education, and Welfare. Today, several institutions own parcels of the wetlands: Baker University owns 573 acres (including the 15 acres the bypass most directly affects), Haskell Indian Nations University owns 27 acres, the Kansas Department of Wildlife and Parks owns 20 acres, now designated as a National Natural Landmark, and the University of Kansas holds 20 acres. The remnants of the Elkins Prairie remain private property. In 1991, construction began on the western nine miles of the Trafficway, but the remaining six that run through the Baker Wetlands are still, as of 2012, in contention, engulfed in legal battles.



Map of the Proposed South Lawrence Trafficway, from Ljworld.com

### **The Facilitators of Growth**

In November 1990, local businessman and newspaper owner Dolph Simons, Jr., posted an opinion piece in Lawrence's local newspaper, the *Lawrence Journal World*. During the previous year, his Saturday Column frequently referred to one particular issue: The South Lawrence Trafficway. Simons' commentary that week discussed the latest controversy raised by the project, the plowing of Elkins Prairie. As the major voice for private and public development in Lawrence, Simons went on the offensive against the local environmental group Save the Elkins Prairie, justifying the plowing by Wichita land speculator Jack Graham. In this opinion piece, Simons cataloged the tactics of the people he called the "greens." They were, "negative, strident, even violent," flamboyant, and corrupted by ulterior motives.<sup>6</sup> To Simons, the environmentalists' protests indicated both disrespect for private property and a

disregard for basic infrastructure that he considered invaluable to the Lawrence community.

The editorials produced by Simons in the early 1990's represented one side in a common struggle between development and environmentalism that stretched back to the United States suburban housing boom of the late 1940's and 1950's. With technological improvements, aid from government agencies like the Federal Housing Administration and the Federal Highway Administration, and a heavy dose of advertising, the post-World War II housing boom allowed middle class citizens to participate in the "American way of life," via homeownership. As historian Adam Rome argues, the values of home and land-ownership during this era became tenants of classic American liberalism, "tied to ideas about democracy, freedom, and civic order."<sup>7</sup> In this way, consumerism and the ownership of private property became associated with nationalism. Developers during this era considered themselves heroes by "answering the prayers of millions," and making the American dream achievable. Thus, these developers assumed a commanding position over the development of American cities that still exists today.

This project examines Lawrence, Kansas as an example of broader national trends. As elsewhere, conflicting local priorities were worked out in a regulatory environment shaped by federal and state politics. As Dolores Hayden states in her book *Building Suburbia: Green Fields and Urban Growth*

<sup>6</sup> Dolph C. Simons, Jr.m "Saturday Editorial Column." *Lawrence Journal World*, 8 December 1990.

<sup>7</sup> Adam Rome, *The Bulldozer in the Countryside: Suburban Sprawl and the Rise of American Environmentalism.* Cambridge University Press: New York, 2001. 7.

1820-2000, federal housing subsidies enabled commercial developers and real estate moguls to take unrestricted suburban growth as a given well into the 1980's. She argues, "By the mid-1950's, federal tax supports for commercial developers and direct deferral support for highways provided incentives for unchecked growth on a scale that earlier entrepreneurs could never have imagined."<sup>8</sup> Hayden goes on to state that throughout the 1980's, both local and federal governments frequently subsidized private and commercial development.

This is certainly true in the case of Lawrence, Kansas, where federal housing subsidies greatly contributed to attitudes towards private and suburban development. Two well-known entrepreneurs often represented business interests within the community of Lawrence: Bob Billings, the 1960's developer of a high-end housing community and private golf course known as Alvamar and the very vocal businessman Dolph Simons, Jr. These individuals, along with land speculators within the community and abroad, held certain assumptions regarding the outcome of the bypass. The assumptions about progress, private property and the "American dream" embedded in this liberal ideology manifested themselves repeatedly in the debate over the South Lawrence Trafficway, coming into conflict with new concerns of environmental consequences. In summarizing Rome's argument, historian Mark Luccarelli stated that many of the environmental problems caused by suburbanization, including land-use controversies, traffic

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<sup>8</sup> Dolores Hayden, *Building Suburbia: Green Fields and Urban Growth: 1820-2000*. Vintage Books: New York, 2003. 4.

congestion, and pollution "[had] everything to do with the (largely) unintended consequences of the American housing system, and the power of the real estate industry to perpetuate the system."<sup>9</sup> As Simons' editorials from the era suggest, frustration and surprise ensued when a group of environmentalists, and later Native Americans, threatened developers' pursuits and questioned their worldviews.

By the time these challenges arose in Lawrence, environmentalism was already well established. Rome argues that complaints over suburban environmental degradation began as early as the 1950's with the "open space movement," and grew to include concerns about pollution in the 1960's. This movement expanded further in the 1970's and 1980's to embrace a myriad of issues, including everything from endangered species protection to energy conservation.<sup>10</sup> A decade after the launch of this national struggle, the battle over the South Lawrence Trafficway represented the clash between traditional notions of private property and progress and concerns of environmental consequences of threatened and endangered species and native landscapes.

The proposed South Lawrence Trafficway galvanized the local movement. From its inception in the late 1970's, to its proposal in the mid 1980's, the South Lawrence Trafficway was a product of this community of private

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<sup>9</sup> Luccarelli, Review: *The Bulldozer in the Countryside: Suburban Sprawl and the Rise of American Environmentalism*. *Organization & Environment*. Thousand Oaks: Mar 2003. (16:1), p. 126.

<sup>10</sup> Rome, 6.

businessmen and real estate speculators, supported by a city and county commission who viewed economic progress as a key priority to the growing community of Lawrence. Many agencies, both federal and local supported these economic priorities, including the Kansas Department of Transportation and the US Army Corps of Engineers. The Federal Highway Administration played an important role in the first phase of construction on the South Lawrence Trafficway by investing in the project. The Lawrence and Douglas County Commissions, with support from the Lawrence Chamber of Commerce pushed the project ahead despite protests, and eventually lawsuits from interest groups within the community. Simons, as the owner of Lawrence's only local newspaper, provided the voice for business interests regarding this development. As the drawn-out battle continued from the 1980s to 1990s, Simons' language reflected frustration and surprise that the community at large was not meeting the desires of Lawrence's pro-growth interest groups.

*City Planning Priorities*

Local historians had long-identified Lawrence as a pluralist community with a vast number of interest groups and a long history of participatory politics. Political scientist Burdette Loomis referred to Lawrence politics as a "bipolar model," which simultaneously supported urban growth while calling for historic and cultural preservation.<sup>11</sup> A brief look at the terms of members in the Lawrence City Commission in the 1980's

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<sup>11</sup> Steve Lopes, "Building Community Power Structures 1984-1998," *Embattled Lawrence: Conflict and Community*. Edited by Dormer, Dennis and Barbara Watkins. University of Kansas: Lawrence, Kansas, 2001. 277.

evidences this model. In 1979, Lawrence elected Don Binns, Ed Carter, Bob Schumm and Barkely Clark to the City Commission. The Lawrence Homeowner's Association supported this Commission, and its members typically identified themselves as "pro-growth." By 1981, a strongly "anti-growth" group including Marci Francisco, Nancy Shontz and Tom Gleason took hold of the Lawrence Commission. And by 1984, David Longhurst, Mike Amyx and Ernst Angino filled the City Commission seats, and once again represented growth and development interests in the community. These interests were maintained throughout the rest of the 1980's.

While members of the City Commission represented their constituency, some interest groups complained that local politics did not always represent their interests. According to sociologist Harvey Molotch, the opposing duties of the local government to its voters as well as to long-term priorities of growth often follow the outcome seen in Lawrence. Molotch argues that those in political positions of power often side with the "local elites," of which he states,

... The political and economic essence of virtually any given locality, in the present American context is *growth*... the desire for growth provides the key operative motivation toward consensus for members of politically mobilized local elites, however split they might be on other issues, and that a common interest in growth is the overriding commonality among important people in a given locale.<sup>12</sup>

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<sup>12</sup> Harvey Molotch, "The City as a Growth Machine." *The American Journal of Sociology*

Identifying growth as “a constantly rising urban-area population”—from job creation to the expansion of residential and retail industries—Molotch argues that land interest and profit are the key factors of all decisions made by what he terms the “political elite.”<sup>13</sup> Members of Molotch’s political elite include any individual who has a stake in land-use decisions; developers like Dolph Simons, Jr. would certainly be included, as well as local politicians who would reap the benefits of “a larger tax base to support necessary state and local government services.”<sup>14</sup> While Molotch’s biases are clear through his language, Lawrence’s political history can be read through his discussion of the duties of local government and notions of growth. In Lawrence, despite the community’s active involvement in politics, the business interests of powerful real estate speculators often enjoyed the support of local government.<sup>15</sup>

The prioritization of the South Lawrence Trafficway was a group-effort by both the Lawrence and Douglas County Commissions. The Commissions justified the need for a southern bypass for three main reasons: traffic control between two nearby cities, Kansas City and Topeka, population growth, and the need to attract private business and commerce to a developing area. Several city-planning documents represented these themes,

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82, no. 2. (September 1976): 309.

<http://jstor.org/>.

<sup>13</sup> Ibid, 310.

<sup>14</sup> Federal Highway Administration and State Highway Commission of Kansas, *Draft Environmental Impact Statement*, 1974 Project No. 59-23 F-DP-067-2. S-7.

<sup>15</sup> Burdett Loomis, “Lawrence Politics: Three Themes, Four Notions and a Handful of Stories.” *Embattled Lawrence: Conflict and Community*. 277.

beginning with vague plans for development in southwest Lawrence in *Guide for Growth 1964-1985*. These plans grew more detailed and sophisticated with later planning guides for the city, especially the *Douglas County Guide Plan 1976-2000*, and *Plan '95*.

*Guide for Growth 1964-1985* first proposed the South Lawrence Trafficway as part of the “West Circumferential Route” (later known as the “Haskell Loop”). This road would loop around the entire city, attaching Kansas Highway 10, east of Lawrence, to Interstate 70 on the west.<sup>16</sup> The text expressed a deep concern for Lawrence’s position 20 miles east of Kansas’ state capitol, Topeka and 32 miles west of the much larger Kansas City metro area, stressing that the West Circumferential Route would improve Lawrence’s connectivity between the two. Intra-urban connectivity is valuable for a number of reasons, one being increased population diversity; urban thinker Jane Jacobs theorized that connectivity enabled economic and intellectual diversity in a “knowledge spillover.”<sup>17</sup> For Lawrence city planners, connectivity enabled more efficient automobile travel between cities, which could increase economic conditions in Lawrence as people from larger cities traveled through, to and from the city. Connectivity was also related to local pride; the authors of *Guide for Growth* boasted of the “Above average cultural and environmental qualities of the community,” due to Lawrence’s proximity

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<sup>16</sup> Harland Bartholomew & Associates, Kansas Industrial Development Commission, Lawrence-Douglas County Planning Commission, *Guide for Growth 1964-1985*. 1964.

<sup>17</sup> Gerald A Carlino. “Knowledge Spillovers: Cities’ Role in the New Economy.” *Business Review*, Q4, (2001): 17-26.



to several universities.<sup>18</sup> City planners viewed Lawrence as a city with great natural features and cultural advantages that deserved to rank among other populous and important nearby cities.

While the authors of *Guide for Growth* referred to Lawrence's environmental qualities, they did not provide any specific examples or suggestions on how to highlight them. In fact, neither this document nor any city planning documents from well into the 1980's ever specified or elaborated upon the environmental qualities that planners deemed so important to Lawrence. Rather, planners viewed the environment as a blank slate to improve upon, envisioning Lawrence as a city of, "... beauty and amenity, a city of which we can be truly proud... [Built] by the means of countless individual and corporate actions, public and private, extending over decades."<sup>19</sup> This document foreshadowed the complications for development in Lawrence, stating definitely that despite Lawrence's grand environmental features, "Nature gives us no excuse for mediocrity."<sup>20</sup> The authors also acknowledged that as Lawrence's cultural and economic position improved, it would require more open space to facilitate a growing community.<sup>21</sup> While the maps included in this document do not mention any natural features that the West Circumferential Route may threaten, this document was written before the federal government created agencies to consider these features. This document provided early and vague plans that would grow more definite in the future.

The Haskell Loop was a precursor to the South Lawrence Trafficway, a proposed road that would have circumvented Lawrence, and enable mainly commercial and residential growth to the west and industrial growth in the east. City and county commissions promoted the Haskell Loop as a means to facilitate commercial growth and move industrial and commercial traffic—like semi-trucks—on the outskirts of the city. This would divert industrial traffic away from Lawrence's major thoroughfares, 23<sup>rd</sup> street and Iowa street. City planning documents stressed that the Haskell Loop would, "reduce the time and cost of through travel," and further eliminate truck traffic while promoting safety and alleviating air and noise pollution and congestion.<sup>22</sup>

As with *Guide to Growth*, these plans discussed Lawrence's location between Kansas City and Topeka, yet fear grew within the community that without planned growth, Lawrence could be absorbed into a larger city's "inevitable urban sprawl."<sup>23</sup> If Jacob's theory of "knowledge spillover" was in fact true, then, without a bypass to facilitate commuter traffic, Lawrence could become a bedroom community to the much-larger Kansas City, Missouri. The assumed inevitability of suburban sprawl indicated that city planners viewed development and growth as a given, which should be planned for accordingly. To city planners, the land surrounding the South Lawrence Trafficway became a means to preserve the city's jobs, heritage and autonomy in the smartest and most-planned fashion possible. This attitude is embedded in all

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<sup>18</sup> *Guide for Growth*. 1.

<sup>19</sup> *Ibid.*

<sup>20</sup> *Ibid.*

<sup>21</sup> *Ibid.*

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<sup>22</sup> *Draft Environmental Impact Statement*, 30.

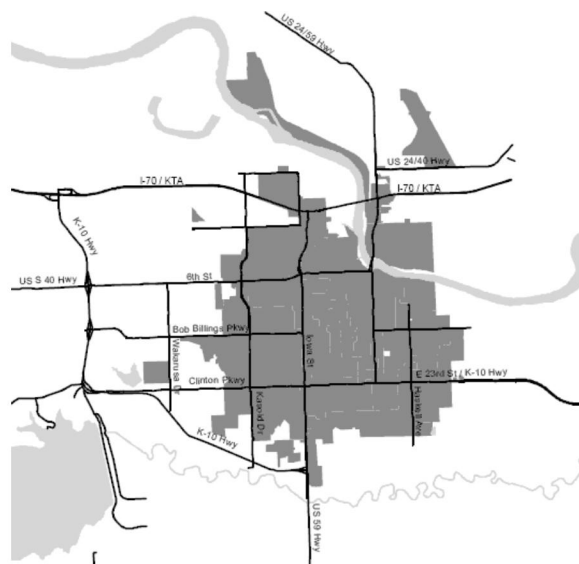
<sup>23</sup> Committee, "Third Community Forum Review of Strawman Plan," 10 November 1993.

of Lawrence and Douglas County planning documents.

After the Commissions voted to accept \$4 million in federal obligation bonds to fund the South Lawrence Trafficway, it became a federal project, overseen by the Federal Highway Administration. According to the National Environmental Policy Act of 1969, before a federal agency can begin construction on a project, it must conduct an Environmental Assessment of the affected landscape. These assessments examine all aspects of the project—from threatened species to an extensive economic analysis, and often result in the creation of a comprehensive Environmental Impact Statement, submitted to the public for review. In 1987, the involved agencies hired a consulting engineering firm, Landplan Engineering, overseen by Brian Kubota, to research and compile a *Draft Environmental Impact Statement* for the South Lawrence Trafficway, and by 1990, the agencies filed a *Final Environmental Impact Statement* for public review.

The *Draft Environmental Impact Statement* built on arguments made by earlier city planning documents, providing specific information about population growth. It projected future population growth using travel pattern data from the 1971 *Lawrence Area Transportation Study* and base year population and employment estimates from US Census data and zoning trends.<sup>24</sup> It estimated that population growth would continue at high rates, especially in Southwest Lawrence. In 1987, the population of Lawrence was 52,785 and

the 1990 *Environmental Impact Statement* estimated that by 2010, Lawrence's population would nearly double.<sup>25</sup> As the population maps below indicate, between 1980 and 2009, the bulk of growth did indeed occur to the southwest. While these maps do not indicate land use, they do suggest that since population density did not increase at a consistent rate with the population, much of Lawrence's southwestern development must be residential. It is also important to note that Lawrence's 2009 population fell over ten thousand people short of 1987's estimated population of 100,000.



#### Lawrence 1980

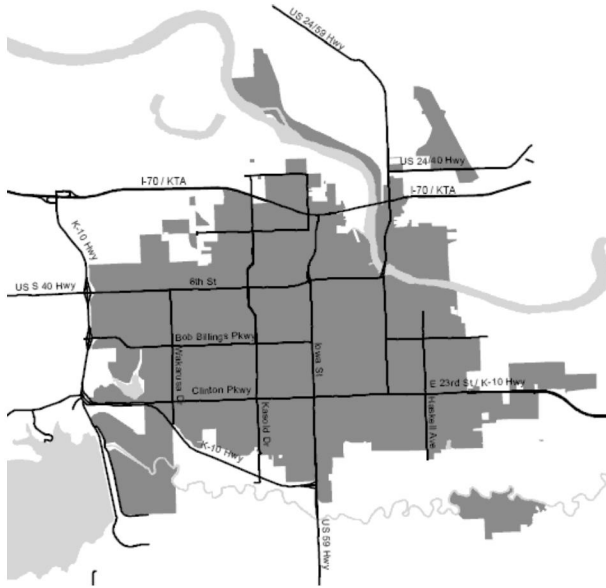
Area: 12,485 acres (19.51 square miles.)

Population: 52,738

Density: 2,703 per sq. mile

<sup>24</sup> US Department of Transportation, Federal Highway Administration, Kansas Department of Transportation, Douglas County and Lawrence, KS. *Draft Environmental Impact Statement*. 1987. 16.

<sup>25</sup> Ibid. I-15.



### Lawrence 2009

Area: 20,883 Acres (32.68 square miles)

Population: 87,643

Density: 2,817 per sq. mile

Following a key argument made by city and county officials, the *Draft Environmental Impact Statement* recommended the South Lawrence Trafficway as a means to divert commercial traffic away from the center of Lawrence. With increased population, traffic safety was a concern for the Commissions; as the *Lawrence, Kansas Traffic Engineering Safety Plan* indicated in 1987, seven of the 25 intersections with the highest annual accident costs were on 23<sup>rd</sup> and 31<sup>st</sup> street.<sup>26</sup> It is not surprising that these roads produce the most accidents since they experience the most traffic, but planners used these statistics to promote the idea that the South Lawrence Trafficway would reduce traffic and accidents on two of Lawrence's largest thoroughfares.

<sup>26</sup> "Lawrence, Kansas Traffic Engineering Safety Plan." November, 1983.

With population growth and the prospects of development in southwest Lawrence came the potential for economic growth, both private and public. The 1990 *Environmental Impact Statement* stressed that while the South Lawrence Trafficway would cost \$37,700,000, by 1986 prices, the jobs and commercial and residential development it would create would greatly benefit the community. The construction of the road would spur a short-term economic stimulus of about \$150,000 annually, and provide jobs for contractors and construction workers, who would receive 25% of the overall cost of the road as salaries.<sup>27</sup> Beyond job creation, the authors of the *Environmental Impact Statement* argued that the project would spur "a multiplier effect, whereby those initially receiving construction money spend it for food, housing, clothes and durable goods," that would inevitably be spent within Lawrence.<sup>28</sup>

The *Environmental Impact Statement* also stressed the value of private business to a growing community. It presented attracting new business to Lawrence as a key duty of the city and county Commission, stating:

The County has the opportunity to exercise a strong, positive influence over the character of the development of the area around Lawrence and in Douglas County.... [it] could play a major role in attracting new business investments to the County resulting in expanded job opportunities for all County residents and a larger tax base to

<sup>27</sup> *Draft Environmental Impact Statement*, 3-4. These estimates made with dollar values from 1988.

<sup>28</sup> *Ibid*, S-6.

support necessary state and local government services.<sup>29</sup>

This document denoted the alliance between the Commissions and developers. As the above list of 1980's City Commissioners indicates, they often represented a constituency interested in local growth and development. Despite Lawrence's notoriously anti-development interest groups, the Commissions saw the trafficway as an investment in Lawrence's future that a large portion of the community wanted. By siding with developers from the beginning, they could promote a "strong, positive influence" over future development patterns.

By 1986, South Lawrence Trafficway construction appeared inevitable. That year, the Commissions voted to federalize the South Lawrence Trafficway project, and accept \$4 million in obligation federal bonds. A year later, the *Draft Environmental Impact Statement* recommended constructing the road in two phases, beginning with the less-controversial nine-mile western portion. Years before, a two-lane temporary road was erected running through the Baker wetlands, on the southern portion of Haskell's land (today, this road is 31<sup>st</sup> street). The first Environmental Impact Statement proposed that the second phase of the road would replace 31<sup>st</sup> street.

This era elicited different responses from environmentalists and developers on questions of private property and ownership; developers altered the land adjacent to the project with tractors and bulldozers, while environmentalists questioned the environmental consequences, and argued that even private land can have public

value. Throughout the early 1980's, members of Molotch's "political elite" encouraged the communities prioritization of the bypass: rumors circulated that Billings utilized his connections in the United States Senate to federalize the project with the bond issue, Simons voiced his opinions strongly through the local media, and owners of private property near the proposed road began preparing for the economic boon. In return, environmentalists questioned the interests of those involved in the writing of the *Environmental Impact Statement*, indicting Brian Kubota, principal engineer of Landplan Engineering, as having two conflicts of interest; owning land near the original route of the trafficway, and serving Bob Billings as a client on other development projects.<sup>30</sup> By calling to question the personal interests of those involved in the project, environmentalists asked the community to consider whose interests were actually represented in the South Lawrence Trafficway.

The Commissions' prioritization of the Trafficway on grounds of economic progress had serious implications both within the community and upon the landscape. Members of the community had been vocal against earlier proposals like the Haskell Loop, however the bypass threatened not only aesthetics and neighborhoods, but also landscapes of ecological and historical value. One incident, described by local historian Clark H. Coan as the "first casualty" of the trafficway, occurred around 1987,

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<sup>30</sup> Clark H. Coan. "Selected Chronology of the Haskell-Baker Wetlands and the South Lawrence Trafficway." *Genuine Kansas*. No date.  
[http://www.genuinekansas.com/history\\_baker\\_wetlands\\_controversy\\_timeline\\_kansas.htm](http://www.genuinekansas.com/history_baker_wetlands_controversy_timeline_kansas.htm)

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<sup>29</sup> Ibid, S-7.

contemporaneous with the initial release of the *Draft Environmental Impact Statement*, when landowners Charles Dunbar and Bruce Snodgrass filled in “several acres” of the Baker wetlands without receiving Clean Water Act 404 permits from the US Army Corps of Engineers.<sup>31</sup> This began what Coan terms the “salami effect,” of development in wetlands where, “a slice here, a slice there, and soon the entire roll is gone.”<sup>32</sup> Coan documented these events in the “Selected Chronology of the Haskell-Baker Wetlands and the South Lawrence Trafficway.” Coan was a major voice for the wetlands during the 1980’s, calling himself a “local historian,” and his bias is evident in this document, however this does not make the speculative filling of the wetlands any less of a reality. The United States Army Corps did little more than slap the three men on the wrists; they were fined \$3,000 and retroactively issued permits for the filled land.

While technically, those individuals illegally filled in wetlands without a permit, they did so on privately owned land. Editorials from these years by Dolph Simons, Jr. come to the defense of his fellow businessmen and entrepreneurs, using the *Lawrence Journal World* as an influential platform. As owner of the newspaper and a very successful local businessman, Simons was an obvious voice for the business community. His arguments regarding the development of the South Lawrence Trafficway are the product of a classical American liberal ideology, focusing on three main ideas: business, private interests and population growth. In one opinion piece from this era, Simons rhetorically asked, “When and where does

the right of an individual to do what he wishes with his own property, as long as it doesn’t break the law or create something bad for his neighbors, intersect with the wishes of others? Where is the line to be drawn on private rights versus public rights of public concerns?”<sup>33</sup> This question was a critique of environmentalists for halting private development, Simons stated, “The surest way for a community to deteriorate is to do nothing at all in the way of necessary growth and expansion... those in charge of community affairs had the foresight and courage to do what was necessary for sensible progress.”<sup>34</sup> According to Simons, these private actions could benefit the public through development and potential growth, and the Commissions appropriately acknowledged this.

Simons was a powerful voice in the community long before the incidents of the Trafficway began to split the community. A Lawrence institution, the Simons family started the *Lawrence World* in 1891,<sup>35</sup> today, known as the *Lawrence Journal World* of which Simons, Jr. was editor and publisher. Simons, Jr. is also chairman of the World Company, which owns several cable companies in the Midwest including Sunflower Broadband in Lawrence.<sup>36</sup> Simons is known for

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<sup>33</sup> Dolph C. Simons, Jr., “Saturday Editorial Column.” *Lawrence Journal World*, 8 December 1990.

<sup>34</sup> Dolph C. Simons, Jr., “Not Funny to Everyone.” *Lawrence Journal World*, 1 November 1986.

<sup>35</sup> David A. Anderson and Dolph Simons, Jr., *A Century of Newspapering the Simons of Lawrence: Celebrating the 200<sup>th</sup> Birthday of Our Nation’s Bill of Rights*. Princeton University Press: 1991.

<sup>36</sup> In 2010, Sunflower Broadband was sold to Knology of Kansas, Inc. for \$165 million. In

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<sup>31</sup> Ibid.

<sup>32</sup> Ibid.

featuring conservative columnists, and periodically offering up pro-development editorials, once quoted as saying, "A newspaper should run conservative columnists even if the publisher or owner is a 'staunch, liberal Democrat.'"<sup>37</sup>

Throughout the years, the *Lawrence Journal World* has been criticized as providing positive coverage of the business community, being resolutely pro-development and neglecting to cover environmental or peace efforts.<sup>38</sup>

Because of his history and notoriety within the community, as well as his accessibility through the *Journal World*, Simons is an appropriate representative for business interests in Lawrence.

In many ways, Simon's summarization of environmentalist tactics was accurate. While he intended to discredit their efforts, he accurately summarized many of environmentalism's most successful methods of stalling development. Environmentalists and scientists, neighborhood organizations and members of the community unaffiliated with a particular interest group rallied against the South Lawrence Trafficway, making their voice heard through increased participation in public forums and political debates. The values of Lawrence environmentalists in the 1980's and early 1990's stood contrary to those individuals with a traditional ideology that expected economic growth as a given.

The growth of interest in the landscapes threatened by the bypass can

be seen through attendance of public forums. Local dissent over the proposed South Lawrence Trafficway began slowly in the late 1970's, comprising mostly of members of neighborhoods near the proposed project. At the first meeting set up by the project's engineers, Howard, Needles, Tammen & Bergendoff (HNTB) and Landplan Engineering, on November 7, 1985, only 40 people attended; by the third meeting on April 16, 1986, 250 attended.<sup>39</sup> This rapid increase in local interest reflects the efforts put forth by residents of Lawrence, university professors and students to make their point within political mechanisms. After the release of the *Draft Environmental Impact Statement*, activists initiated large-scale protests. They criticized the lack of analysis of Elkins Prairie and the Haskell Baker Wetlands, and eventually sought legal advice and hired lawyers to ensure that their interests were represented. While the *Final Environmental Impact Statement* released in 1990 addressed these landscapes more completely, environmentalists, and three years later, members of the Haskell Indian Nations University—who had a vested interest in the project—remained dissatisfied. Haskell entered the protests after the release of the *Final Environmental Impact Statement*, arguing that the cultural and historical values of the wetlands had not been significantly considered.

To Simons, the typical environmentalist, with their protests, spectacles and lawsuit threats, was more nuisance than hero. The language of his opinion pieces from this time periods was frustrated, indignant that such trifling matters as an endangered frog or prairie plant stalled him and his fellow businessmen from achieving higher levels

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April 2012, Knology was again sold to WideOpenWest for \$750 million.

<sup>37</sup> Anderson and Simons.

<sup>38</sup> Stephen Lynn, "Citizen Dolph: A rare look at the media mogul who dominates the Lawrence information business." *University Daily Kansan*. 4 April 2006.

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<sup>39</sup> *Draft Environmental Impact Statement*, 116.

of economic success. This represented a clash in values; while environmental protesters used a number of these tactics to protect their prized landscapes, Simons did not regard these attempts as valuable in any sense of the word.

The clash of priorities between environmentalists and local businessmen and pro-development institutions reflect two differing opinions on the definition of the word progress. To Simons, progress related directly to population and he strongly supported any document that stressed this matter. Simons wrote in one opinion piece, "As our country grows, there will be greater and greater demands for land use by a growing population."<sup>40</sup> This argument that public infrastructure and private projects are necessary to support a growing population placed value solely on economic progress. He placed no value in the Elkins Prairie or Haskell Baker wetlands beyond their role as land for development.

To an environmentalist, however, progress meant something quite different. Editor of the University of Kansas's newspaper, and current Attorney General for the state of Kansas Derek Schmidt had a different suggestion on how to approach the growing city: "As Lawrence grows, it needs an ambitious, systematic program to identify and purchase ecologically valuable lands."<sup>41</sup> This quote alluded to the creation of the Kansas Land Trust in the 1990's, and stressed progress towards better protection of those "environmental qualities" once deemed so

important to the city of Lawrence in the 1964 *Guide to Growth*.

As the documents analyzed in this chapter indicate, local government prioritized the South Lawrence Trafficway, assuming that the community would accept their justifications of traffic safety and population control. Environmentalists had a different agenda. Mirroring the strategies of environmentalism that began in the 1970's, Lawrence environmentalists used protest and worked with local government in an attempt to protect the Elkins Prairie, and worked within the context of the National Environmental Policy Act to protest the road's projected path through the Baker Wetlands. A discussion of Lawrence environmentalists' values, approaches and notions of progress is the subject of the next section.

### **A Frog for Commissioner, A Funeral for a Prairie**

In the early hours of November 18, 1990, a group of 20 individuals huddled together outside of an 80-acre plot of land just southwest of Lawrence. Some held signs, some engaged in debate, and others stood silent, looking on at the object of their early-morning meeting: a lone tractor, resting in the middle of its half-plowed path. The plowing began around midnight, and halted as the group grew to include journalists, policemen and members of the Lawrence City Commission and Douglas County Commissions. The next day, the Commissions held an emergency meeting to discuss the fate of those 80 acres, where they decided to buy out the land's private owner, Jack Graham. After hours of debate, Graham refused their offer. The following day, the tractor resumed its

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<sup>40</sup> Dolph Simons Jr., "Saturday Column," *Lawrence Journal World*. 8 December 1990.

<sup>41</sup> Derek Schmidt. "Purchasing Power: County needs preservation program to prevent more land from meeting Elkins Prairie's fate." *University Daily Kansan*.

path, turning up 30 acres of virgin prairie soil.

The plot of land, known locally as the Elkins Prairie, was one of a few remaining virgin Big Bluestem prairies<sup>42</sup> in the world, argued by some to be, "... the most endangered biome in North America."<sup>43</sup> It supported over 150 plant species, including two federally listed threatened species, Meads Milkweed and the Western Prairie-Fringed Orchid. Environmentalists maintain that Elkins Prairie was an ecologically rich area threatened by city and county development and undervalued by city, county and federal officials. Though the damage made by that tractor cannot be undone, it provided a valuable lesson to local environmentalists: "Elkins Prairie is a symbol of preservation come too late... it's a lost battle... it provides us an occasion to make the public aware of environmental issues, and it reminds politicians that although we lost this battle, we are a force to contend with in Douglas County and in Lawrence and the state of Kansas."<sup>44</sup>

This chapter examines the historical basis for the environmental protests of the South Lawrence Trafficway and examines how environmental tactics are shaped by federal processes such as the National Environmental Policy Act, the perceived value of different types of landscapes and the expectations of development as discussed in chapter one. It highlights two protests made by Lawrence

environmentalists in the 1980's and the eventuality of legal battles to support the argument that environmentalists are limited to a specific set of tactics when fighting a battle against development.

The environmentalism that developed in Lawrence in the early 1980s centered on issues specific to the Kansas landscape. Landlocked, and with more space and less population density than other states, Kansas bred an environmentalist movement focused on the value of ecological landscapes in terms of suburban growth, residential development and highway infrastructure. Home to a major state university, the University of Kansas, Lawrence had the informed community of scientists and biologists necessary to early environmental movements. With the community of educators and students at KU, as well as the only multi-tribal university in the United States, the Haskell Indian Nations University,<sup>45</sup> Lawrence identified itself as a culturally rich, diverse and forward-thinking community.

Environmental protest in Lawrence grew out of a grassroots anti-growth movement in the community. Members of the community were notoriously preservationist, especially in matters of historical conservation; by the 1970's, neighborhood associations had cropped up throughout the city, both successfully and at times unsuccessfully protesting development. Actions taken by these neighborhood associations include protesting the construction of Bob

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<sup>42</sup> *Draft Environmental Impact Statement*. I-22.

<sup>43</sup> George F. Frazier, "Kansas Landowner Destroys Tallgrass Prairie Relict." *Earth First Journal*. 21 December 1990.

<sup>44</sup> Debbie Myers, quoting Dennis Domer, "Elkins Prairie's plowing mourned." *Lawrence Journal World*. 22 November 1992.

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<sup>45</sup> Kelly D. Lynn. "Seeking Environmental Justice for Cultural Minorities: The South Lawrence Trafficway of Lawrence, Kansas." (JD Thesis, 2001). 222.



Billing's Alvamar,<sup>46</sup> the destruction of historically significant homesteads, and the development of a mall near Lawrence's major commercial center, Massachusetts Street. At times, these interest groups effectively voted their candidates for city and county commission into office, yet as the previous chapter indicated, those candidates who supported business interests most often enjoyed seats on the City and County Councils. Politically informed, interests groups were vocal about their values and interests, yet when business met grassroots preservationists, the business interests often won out.

Lawrence was both politically aware, and also boasted a scientifically informed community of scientists and scholars from the universities. The protests from this era reveal that Lawrence environmentalists knew not only the ecological significance of their landscapes, but they understood the laws and regulations that protected their values. These laws and regulations included the National Environmental Policy Act of 1969, an act that requires any federal agency proposing development to prepare an Environmental Assessment, and potentially a more in-depth assessment in the form of a Draft and Final Environmental Impact Statement before beginning construction. The National Environmental Policy Act required that these assessments be released to all involved agencies, the Environmental Protection Agency and the public, to

ensure accountability. Established in 1969 with a string of national laws, agencies and policies that prioritized the environment for the first time in American history, the National Environmental Policy Act declared its purpose as,

To declare a national policy which will encourage productive and enjoyable harmony between man and his environment; to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man; to enrich the understanding of the ecological systems and natural resources important to the Nation; and to establish a Council on Environmental Quality.<sup>47</sup>

The National Environmental Policy Act demanded unprecedented accountability by agencies to at least consider the effects of industry and development on the environment.

This process provided a regulatory setting for environmentalists to form public opinion, influence local government and affect litigation. The creation of the National Environmental Policy Act was essential to the environmental movement, acknowledging that the consequences of development must be considered, however it remains only a process without regulatory influence. Since the National Environmental Policy Act is a process used to identify important landscapes, not necessarily to protect them, many critics argue that it "lacks substantive force."<sup>48</sup>

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<sup>46</sup> Barkley Clark, "Lawrence in the 1970's: Recollections of a Mayor." *Embattled Lawrence: Conflict and Community*. Edited by Dormer, Dennis and Barbara Watkins. University of Kansas: Lawrence, Kansas. 2001. 250.

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<sup>47</sup> EPA, "National Environmental Policy Act." <http://www.epa.gov/compliance/basics/nepa.htm> l.

<sup>48</sup> Lynn, 224.

For this reason, the brunt of the work falls to the group or environmentalist concerned about protecting a certain landscape to ensure that its environmental values are recognized. Lawrence environmentalists used the National Environmental Policy Act process to ensure that developers identified all the potential environmental consequences of the South Lawrence Trafficway. As with other projects, environmentalists also used the process to stall the construction of the South Lawrence Trafficway however they were not able to use the process for any means beyond informing developers and stalling construction.

Opponents of the Trafficway utilized political maneuvers, working both within and against Lawrence's political system as needed. Protestors of the plowing of Elkins Prairie attempted to secure preservation by working closely with members of the city commission as well as national foundations, like the Nature Conservancy. Early protests over the Haskell-Baker wetlands took advantage of local politics to make a statement about the priorities of their government officials. Both relied heavily on the media to disseminate information about their cause, sometimes using spectacle to their advantage (i.e. running a frog for political office). Eventually, after the advocates of Baker Wetlands extended the reach of the Environmental Impact Statement into the court room, to ensure that developers were adhering to the NEPA process. Although the efforts to preserve Elkins prairie ultimately fell short, interest groups used the experience to fuel support against the project that destroyed it.

When discussing environmentalism, it can be easy to fall into a common dichotomy of progress

versus preservation. This binary sets up two opposing ideologies as black and white, as historian Andrew Kirk states, "In this ideological tradition, wilderness became the ultimate symbol of environmental purity and abundance, with the polluted modern technological city its antithesis."<sup>49</sup> At first glance, Elkins Prairie protesters may appear to be strictly a preservation effort, and the city and county commissions staunchly progress-oriented. Yet, the Commissions initially rerouted the South Lawrence Trafficway to avoid the Elkins Prairie, and later worked with environmentalists to create the Douglas County Natural Areas program. This collaborative vision was broken when Jack Graham plowed those 30 acres of virgin prairie, but neglecting the nuances and moments of collaboration between the two different priorities does neither party justice. Likewise, Agnes T. Frog's campaign may appear to be a radical stunt, stressing a dichotomy of progress versus preservation however it turned out to be a savvy political strategy whose main achievement was not preservation, but rather a heightened awareness of the responsibility of Lawrence's citizens in development decisions that affect their community.

The bypass threatened two ecologically sensitive locations in Lawrence, the Elkins Prairie west of Lawrence and 15 acres of the Baker Wetlands. Environmentalists valued these for different reasons; the Elkins prairie was a virgin prairie, which contained many unique prairie plants, including two federally listed threatened

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<sup>49</sup> Andrew J. Kirk. *Counterculture Green: The Whole Earth Catalog and American Environmentalism*. Lawrence: University Press of Kansas. 2007. 13.

species. Haskell Baker wetlands, on the other hand, had less clearly defined ecological value—although its wetlands are essential for flood management, pollution control and wildlife habitat, and remains to be the home of federally listed threatened species the Northern Crawfish Frog. Nevertheless, its protectors argued with increasing vehemence that it had historical and cultural value to the surrounding community. As the controversy continued into the 1990's, environmentalists adapted their position by allying with Haskell Indian Nations University, which owned several acres adjacent to the proposed 31<sup>st</sup> street alignment. The alliance would facilitate a cultural and legal argument that linked the environment, spirituality, education and culture.

#### *The Protests: Agnes T. Frog and the Elkins Prairie*

The first large-scale protest of the South Lawrence Trafficway manifested itself during election for Douglas county commissioner. In fall of 1986, a group calling themselves the Committee to Elect a True Amphibian promoted their pick for county commissioner '86: Agnes T. Frog. Agnes ran head-to-head against previously unopposed Nancy Hiebert, Democratic chairman of the three-member county commission, who was running for her second term in the 1st district. Agnes represented a number of causes for the Committee to Elect a True Amphibian, the first of which was the committee's frustration over the commission's 1985 decision to issue \$4 million in general obligation bonds to help pay for the South Lawrence Trafficway. Of this issue, "Agnes' backers say votes for the frog will be a sign to the commission that the bond issue should

have been put up for public vote."<sup>50</sup> Agnes' campaign fused Lawrence's political interests with environmentalism using the frog as a statement against what they considered to be a lack of political representation in their local government, and neglect of the constituency's interests.

However, the Agnes T. Frog campaign was not merely a political stunt. Running a frog for office also served as a reminder that the physical landscape of the Haskell Baker wetlands was a habitat for many creatures and thus more than just an empty plot of land. Agnes T. Frog gave voice in opposition to a traditional viewpoint about the environment that viewed open space not merely as a blank slate on which to improve on by infrastructure and industry. Admittedly, the "amphibian point of view" rejected the benefits promised by the trafficway, notably the jobs and commerce it would bring to the city, but ballots indicated that the message resonated with the community: Agnes received over 1800 votes to Hiebert's approximately 4800 votes.<sup>51</sup> Although Hiebert won the election, the result revealed that the community was more divided on the South Lawrence Trafficway than expected. Commenting on the close result, Agnes' Treasurer stated, "The fact that a frog was able to garner nearly 30 percent of the vote in this week's county commission election should be ample proof to our elected officials that the people of Douglas County do not

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<sup>50</sup> "Solo face isn't without issues," *Lawrence Journal World*, 3 November 1986.

<sup>51</sup> Committee to Elect a True Amphibian memos, on file at the Spencer Research Library. November 1, 1986.

uniformly support mindless paving of our environment.”<sup>52</sup>

The budding public concern for the wetlands united Lawrence with other places in the United States. Nationally, wetlands benefitted from an educated and informed public who conducted protests in the increasingly politicized arena of environmental controversies, as historian Ann Vileisis states. She writes that, “like seeds in a fertile field after spring rain, concern for wetlands sprouted everywhere and citizens working to protect their local wetlands became a vital part of the new environmental movement.”<sup>53</sup> The ecological benefits of wetlands were easy to identify, as they provided flood control, pollution control, and attracted interesting waterfowl.

If wetlands captured greater public attention, other landscapes did not fare so well in this political climate. Prairies, like the Elkins Prairie, excited less national awareness or concern, probably because of their less obviously exotic nature. In Lawrence, though, Elkins Prairie became a symbol for local environmentalists in the years preceding the plowing of November 18, 1990.

In the years before the Elkins parcel became a local *cause célèbre*, students, teachers and wildlife enthusiasts had recognized the value of the land as part of the remaining 2% of original tallgrass prairies in the United States.<sup>54</sup> Besides containing two federally-listed threatened species, Meads Milkweed and the Prairie Fringed Orchid,

the prairie was diverse and many of its species, as one activist poetically describes,

... Cannot be easily restored, since prairie plants are exquisitely tuned to season and place... once plowed, the root systems—and balance—are forever destroyed. More aggressive plants like thistle invade broken prairie and choke our fringed orchids, butterfly plants, compass plants, milkweed and many other edible and medicinal plants.<sup>55</sup>

As a part of Kansas’ ecological heritage, tallgrass prairie is incredibly valuable, and scientists and students valued this landscape as a living laboratory within which to study a rare ecosystem. To an environmentalist, the idea that such a fragile and rare landscape was being threatened by a construction project was a travesty, since, as this quote indicates, once plowed, the value of a virgin prairie could not be mitigated or restored.

To speculators like Jack Graham, on the other hand, the issues surrounding Elkins turned on questions of private property. Graham purchased the land for \$1200 an acre from the Elkins family several years before the release of the *Draft Environmental Impact Statement*. Before plowing, city and county commissions tried to buy the right of way, but Graham declined. Fearful that Graham would alter the land, activists in Save the Elkins Prairie, the University of Kansas’ Environs club and the Lawrence chapter of the Audubon Society quietly appealed the Nature Conservancy, a non-profit organization that purchases biologically threatened land, though the alliance did

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<sup>52</sup> “Frog Jumps into Politics,” *Lawrence Journal World*. 7 November 1986.

<sup>53</sup> Vileisis, 212.

<sup>54</sup> Lynn Byczynski, “Ignoring Pleas of Environmentalists, Kansas Man Digs Up Virgin Prairie.” *New York Times*. 23 November 1990.

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<sup>55</sup> Denise Low, *New Tenants*. Unpublished document. 1993.

not produce any positive results for the Elkin's Prairie. In 1989, the Nature Conservancy offered Graham \$3500 an acre, which he declined as well.

Two years before the issue escalated, local officials had tried to reconcile these opposing interests. The South Lawrence Trafficway Interlocal Agreement of December 1988, made between County and City Commission Chair, County and City Clerk, County Counselor, City Attorney, Attorney General and Secretary of Transportation, as well as Mayor Bob Schumm, reflected the cooperative approach that local government took to Elkins Prairie and environmental activists cause. This agreement proposed to develop the land within reason, promising that, "Urban and suburban growth will be constrained when it endangers the preservation of environmentally or ecologically sensitive land uses."<sup>56</sup> It established regulations for the proposed path of the South Lawrence Trafficway, to maintain open spaces 150 feet from right-of-way along both sides of trafficway, and preserve historical natural features such as prairie lands from encroachment of future development.<sup>57</sup> The South Lawrence Trafficway Interlocal Agreement represented local officials attempt to fuse progress and preservation, and following its publication, local officials attempted to reroute, and even condemn the Elkins Prairie two years before the plowing.<sup>58</sup>

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<sup>56</sup> Lawrence City Commission and Douglas County Commission. *South Lawrence Trafficway Interlocal Agreement*. December 1988.

<sup>57</sup> Ibid.

<sup>58</sup> Steve Buckner, "Legal Snags block land purchase." *Lawrence Journal World*. 2 November 1990.

Zoned as agricultural land, and protected under the Interlocal Agreement of 1988, Elkins Prairie appeared safe from the commercial and residential development that the South Lawrence Trafficway promised. Although Graham was tight-lipped about his motives for purchasing and subsequently plowing the land, vocal environmentalists in the community suspected that his interest was nonetheless tied to the economic developments surrounding the Trafficway.<sup>59</sup> In the early hours of November 18, 1990, city and county officials met with Graham in a last-ditch attempt to buy the right-of-way and save what they could of the half-plowed prairie. They offered a purchase totaling \$480,000 (6,000 an acre) including a 10% down payment, but Graham did not want to sell, and the deal fell through.<sup>60</sup>

The plowing of Elkins Prairie provided another instance where federal regulations aimed at protecting the environment could not hold up against private development. In correspondences between Larry Kipp and United States Fish and Wildlife Field Supervisor William H. Gill, Gill explained that the Fish and Wildlife Service could not rezone, or protect federally listed threatened plant species located on private property, rather, "Only the plants themselves, or federally-designated critical habitat (which does not include Elkin's Prairie or any other parcel of land in Kansas)." Gill concluded that, "Once the plants were removed through the legal actions of the landowner, this federal nexus was removed, effectively ending the Services

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<sup>59</sup> Kathryn M. Nelson, "Group hopes to preserve untouched prairie." *Kansas City Star*, 5 February 1989.

<sup>60</sup> Frazier.

involvement with Elkin's Prairie."<sup>61</sup> The plowing of Elkins Prairie provided another example of the limitations of federal regulations that regard the environment.

These protests and the outcomes of Elkins Prairie and the Baker Wetlands differed because of attitudes towards private property and ecological value. Beyond the issues of private ownership versus public ownership that shaped the protests, another major difference was the physical landscape of the land they were trying to preserve. There is less interest in prairies, most of which are already gone and as one local environmentalist argues, are not appealing like other flagship landscapes: "[Prairies] aren't outstanding treasures like Yellowstone or Yosemite. The prairie's wonders are subtle, fragile, and now, extremely rare."<sup>62</sup> Those environmentalists trying to save the Elkins parcel argued that the prairie had less dramatic but significant properties, including biodiversity and rarity.

Another difference between these two protests and their landscapes was the extent to which a project like the South Lawrence Trafficway would alter the landscape, and the potential for mitigation. Activists intent on protecting the Elkins Prairie had a different focus than those wishing to protect the wetlands; Wes Jackson, the director of the Land Institute in Salina, Kansas, expressed his sentiments towards the permanence of Elkins degradation stating, "With the cutting of the roots... a new way of life opened that simultaneously closed probably forever a long line of ecosystems stretching maybe 30 million

years..."<sup>63</sup> In the case of wetlands, however, mitigation was feasible, and the creators of the *Environmental Impact Statement* offered a mitigation deal that would increase the acreage of the Baker wetlands in a nearby area known as the Santa Fe Site, and include a state-of-the-art educational facility with which to educate students in the surrounding community. In the case of the Elkins Prairie, however, one could not mitigate for the loss of an endangered species on one of its last remaining habitats.

Wetlands enjoy a certain level of protection under the Clean Water Act Section 404, which requires that any individual seeking to fill a wetland must first file for a permit with the United States Army Corps of Engineers.<sup>64</sup> As with other environmental acts, such as the National Environmental Policy Act, this does not protect the wetlands from development, and the US Army Corps of Engineers rarely denies a permit.<sup>65</sup> Even within the acts and processes that protect the environment, the status quo favors developers and places the work of protection to those who want preservation.

The local and national media coverage elicited by these protests suggests that the South Lawrence Trafficway was part of a national conversation about environmental controversies during this era. The shock value of running a frog for any

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<sup>61</sup> Correspondence between Larry Kipp and F&WS Field Supervisor William H. Gill. 1999.

<sup>62</sup> Frazier.

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<sup>63</sup> Debbie Myers. "Elkins Prairie's plowing mourned." *Lawrence Journal World*. 22 November, 1992.

<sup>64</sup> EPA. United States Clean Water Act, Section 404 <http://water.epa.gov/>.

<sup>65</sup> Section 404 does not necessarily regulate against improper filling, as the US Army Corps of Engineers retroactively issued permits for the illegal filling of the Baker Wetlands in 1987.

governmental position propelled Agnes T. Frog's campaign into the pages of the *Topeka Daily Times*, *Kansas City Star*, *Wichita Eagle*, the *Associated Press*, the *Wall Street Journal*, the *New York Times* and *USA Today*, while Elkins Prairie protestors found themselves on the pages of the *New York Times* as well, presenting Lawrence as historically environmentally conscious:

In the past few years Lawrence residents have tried to balance urban growth and preservation of the environment. Home to the University of Kansas, Lawrence has grown 23 percent since 1980, but development has been tempered by strong community support for preservation. Preservationists have prevented construction of a suburban shopping mall, closed a riverfront promenade in winter to protect bald eagles and rerouted a proposed highway to save the habitat of a rare frog.<sup>66</sup>

It is significant that a city with a successful track record of tempering development was a newsworthy subject. Although the Elkins Prairie was a battle that environmentalists eventually lost, Lawrence entered a small group of cities known for questioning the status quo of suburban development.

*When All Else Fails...*

When environmentalists exhausted their other avenues of protest, they resorted to legal maneuvers in their quest to block the construction of the South Lawrence Trafficway. In 1985, the community experienced its first lawsuit

over the bypass. The two-year legal battle regarded the same bond issue protested by Agnes T. Frog. The plaintiff, Leslie W. Blevins Sr., a Lawrence resident, represented by attorney Donald Strole, sued the county on grounds that it exceeded its home rule power in issuing \$4 million in bonds of the proposed trafficway without a public vote.

According to Strole, the county used "legal slight of hand," in calling the road a "bypass" rather than an identifying it as an "arterial highway," which would require the bond issue to go to a public vote. Blevins argued that, "the county commissioners have skirted the law, in a blatant, calculated series of moves which were intended to thwart any challenge ever being made against the bonds, whether by voter petition or taxpayer lawsuit." As compensation, he requested that the County be restrained from spending the money from the bonds it had issued on the construction of the South Lawrence Trafficway, and that the City be submit the issuance of the bonds for voter approval.<sup>67</sup>

Ultimately, the Kansas Supreme Court sided with the plaintiff, stating that Douglas County intentionally avoided a public vote by calling a "trafficway," rather than highway and thusly the County Commission's 1985 bond issue was illegal because no vote was held as required by state law:

The county attempted to circumvent a requirement in state law, which requires that elections be held on bond issues involving construction of arterial highways by calling its project a bypass and

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<sup>66</sup> Lynn Byczynski, "Ignoring Pleas of Environmentalists, Kansas Man Digs Up Virgin Prairie." *New York Times*. 23 November 1990.

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<sup>67</sup> Kansas Supreme Court, *Blevins vs. Hiebert. FindACase*.  
[http://ks.findacase.com/research/wfrmDocViewer.aspx/xq/fac.19900713\\_0042131.KS.htm/qx](http://ks.findacase.com/research/wfrmDocViewer.aspx/xq/fac.19900713_0042131.KS.htm/qx)

naming it the South Lawrence Trafficway... [The South Lawrence Trafficway] qualifies as an arterial highway... Douglas County chose not to make the required designations. Rather, it designated the proposed highway the South Lawrence Trafficway to try to extricate itself from the statute.<sup>68</sup>

The initial ruling found the County's decision to accept the obligation bonds unlawful. Rather than demand that the County and City return the bonds, though, the Court reversed their ruling in July 1990. The re-ruling stressed that the earlier ruling caused too much confusion, "in cases of constitutional and statutory home rule," and demanded that the County decide the fate of the bond issue in a public vote.<sup>69</sup>

The case polarized the South Lawrence Trafficway issue. Justice Tyler Lockett criticized the court for making an exception for Douglas County, especially after initially siding with the plaintiff. Others viewed the County as innocent in their choice of words. David Corliss, staff attorney for the League of Kansas Municipalities, and current City Manager of Lawrence, sided with the county and viewed the initial ruling as a threat to local governments' home rule power, arguing that, "local governments will have to have their legal counsel pore through law books to see whether there's a statute that applies to the action be considered."<sup>70</sup> This quote signifies the frustration felt by proponents of South Lawrence Trafficway, who expected to

sweep through the project without question. Environmentalists used lawsuits to ensure that local politicians acted legally within the system, and their lawyers knew the laws, much to Corliss' chagrin. This legal critique was (and remains to be) common among proponents of the trafficway, who complained that environmentalists were intentionally nitpicky, using any means necessary to stall the road.

The *Lawrence Journal World* frequently and exhaustively covered this lawsuit. The coverage of this battle represents how increasingly important and polarizing the subject had become within the community. The bond issue went up to a vote in 1990, and the county residents voted 13,679 to 10,815 in favor of construction.<sup>71</sup> This validated the Commission's 1985 decision, who believed that accepting the bonds was within the best interests of their constituency. This first case opened the floodgates for environmentalists, who would produce a deluge of lawsuits regarding the South Lawrence Trafficway in the following decade.

Although the plowing of the Elkins Prairie in 1991 was a small blip on the radar of controversies surrounding the South Lawrence Trafficway, the incident did affect some of those in the community, even changing the mind of some citizens who voted in favor of the bond issue. In a letter to the editor published in the *Lawrence Journal World* shortly after the plowing, Robert Redling, a community member who voted "yes" for the bond issue in 1990, thanked Jack Graham for escalating the issue and ensuring that the community at large was

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<sup>68</sup> Duane Retzlaff, "High court reverses ruling on trafficway." *Lawrence Journal World*. July 14, 1990.

<sup>69</sup> Ibid.

<sup>70</sup> Ibid.

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<sup>71</sup> "Key events in the South Lawrence Trafficway's history." *Lawrence Journal World*. September 30, 2004.



aware of the environmental concerns regarding the South Lawrence Trafficway: "Although I cannot reverse my 'yes' vote on that trafficway project, there will be at least one more citizen from Lawrence this year urging his state, and federal elected representatives to toughen laws that are designed to protect fragile lands."<sup>72</sup> Redling's argument foreshadowed the increased polarization that would occur in the next decade of the debate, as highly publicized legal battles and public forums continued to fracture the community over the South Lawrence Trafficway.

The incident also encouraged environmentalists to create new, more effective means of protecting threatened landscapes. One of these efforts became the Kansas Land Trust. Formed in July 1990 the Kansas Land Trust sought to "identify sites such as prairies, woodlands and wetlands in the state for possible protection."<sup>73</sup> Led by Kelly Kindscher, the Kansas Land Trust would work alongside the Kansas Natural Heritage Program, to identify and purchase development easements from landowners so as to protect ecologically sensitive or threatened land within Douglas County. The Kansas Land Trust asked the County for \$40,000 per year for five years to acquire threatened land within its borders, which the Trust would match with \$20,000 donations of land, cash, materials and labor. The Trust also promised to cover secondary costs, including surveying the land and maintenance. Kindscher presented House Bill 35-12, a bill that would provide federal tax breaks to landowners using

conservation easements who promised to preserve, "significant tracts of land."<sup>74</sup> Stressing the value of a landowner's right to, "protect and preserve land of ecological, scenic, historical, agricultural or recreational significance,"<sup>75</sup> the bill passed the Kansas Legislature in 1993.

Two years after the plowing of Elkins prairie, 15 individuals met again in the cold at the corner of intersection US Highway 40 and County Road 13 for a funeral, of sorts, for the ruined treasure. At the event—covered by local and state media—poets spoke, lamenting the loss of the landscape, and other speakers focused on the future of environmental preservation in Lawrence. The loss of Elkins Prairie further fueled local support to protect the surviving Baker Wetlands. Activist Yohanna Shrader-Storm stated, "We need to take action because I don't want to be here a year from now holding a funeral for the Baker Wetlands."<sup>76</sup> Steve Hamburg, the first president of the Kansas Land Trust took advantage of the interest and to promote the Kansas Land Trust and encouraged the crowd to donate time and money to the Douglas County natural areas program and Kansas conservation easement legislation.

Shortly after the plowing, local artist Stan Herd and Daniel Dancer, with Kelly Kindscher created a piece of ephemeral art out of the plowed remains of Elkins' native grasses. Entitled Hexagon 47, the piece represented the Chinese

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<sup>72</sup> Robert Redling. Letter to the Editor. *Lawrence Journal World*. 1991.

<sup>73</sup> Steve Buckner, "Land trust proposal unveiled to county." *Lawrence Journal World*. 6 December 1990.

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<sup>74</sup> Steve Swartz, "1990 loss of prairie remembered." *The Capital Journal*. 18 November 1991.

<sup>75</sup> Kansas Land Trust, "KLT Mission." *Private Landowner Network*. <http://www.privatelandownernetwork.org/yellowpages/resource.aspx?id=85>

<sup>76</sup> Elicia Hill, "People Lament the Loss of Elkins Prairie." *University of Daily Kansan*. 28 November 1990.

symbol for adversity from the ancient Chinese text, the *I-Ching*, or *Book of Changes*. Of the piece, Dancer recalled the deep ecological history of native prairies, stating, "Creating the *I-Ching's* symbol for adversity from bordering native grasses was a way to honor a wildness present since the last ice age."<sup>77</sup> The artists chose this symbol to encourage healing and restoration, stressing the relationship between the dead grasses that would eventually return to the damaged soil. These artists would work again in the coming years to create another larger piece of environmental art, The Medicine Wheel.



**Hexagram 47, by Daniel Dancer, Stan Herd, Kelly Kindscher, 1990.**

### **A New Era of Controversy**

Not so long ago, when the white man began to plow the prairies, the Indians would watch in amazement. As a story goes, one warrior sat beneath a tree observing a man with horse and plow rip across a stretch of blooming spring prairie. In the waning light when the man had finished, the warrior approached

him and stopped at the edge of this new alien ground. He pointed to the black earth and said simply, "Wrong side up," and walked off.<sup>78</sup>

Lawrence citizen Daniel Dancer submitted this story as a letter to the editor to the *Lawrence Journal World* in 1990. A local artist and author of, *Desperate Prayers: A Quest For Sense In A Senseless Time*, Dancer's work focuses on indigenous art, culture, spirituality and environment. This letter to the editor represented a common perspective presented in the 1990's by the Native American students, alumni and faculty of Haskell Indian Nations University that stressed a convergence of education, spirituality and the environment. Dancer's story also recalls a deep history of conflicting notions about the earth and development between the Native American and the pioneer that persisted well into the debate over the South Lawrence Trafficway.

A response to the plowing of the Elkins Prairie, Dancer's article also represented the growing cooperation between environmentalists and Haskell Indian Nations University that grew during this time. During this era, the Haskell Board of Regents penned an official response that represented the institution as well as the 169 individual tribal nations that Haskell Indian Nations University represents. The document stressed the history and educational value of the wetlands adjacent to the proposed South Lawrence Trafficway. The period also witnessed the proliferation of interest groups devoted to protection of the threatened wetlands, including the Wetlands Preservation Organization, and

<sup>77</sup> "In Concert With Nature: The Environmental Art Photography of Daniel Dancer." *Art for the Sky*. 2007.

<sup>78</sup> Daniel Dancer, "Letter to the Editor." *Lawrence Journal World*. 1990.

a coalition between the local chapter of the Audubon Society and Sierra Club, the University of Kansas Environs, and the Wetlands Preservation Organization. The early tactics of these two groups differed; at the same time that the official representatives of Haskell sought to work with all the groups associated with the 1990 *Final Environmental Impact Statement* in an attempt to achieve more representation in the NEPA process, the interest groups increasingly engaged in legal battles to stall construction.

When the battle over the Elkins Prairie ended with the plowing in 1991, the controversy over the Baker Wetlands had only begun. In 1994, with the Elkins Prairie no longer an issue, the Kansas Department of Transportation began construction on the first nine western miles of the bypass. The eastern segment of the South Lawrence Trafficway, however, was not built, and the trafficway's dead-end at South Iowa street signified the future decades of challenges that the Kansas Department of Transportation and fellow development interests would face, as environmentalists' arguments took new shapes. Before 1990, the debate over the wetlands was defined by the interests of developers versus the largely ecological concerns voiced by environmentalists. As the preceding chapters argued, there were many subgroups and a myriad of interests represented in this debate, but the debate was carried out primarily in these terms. After 1990, and the public release of the *Final Environmental Impact Statement*, members of the Haskell Indian Nations University, under the leadership of Chuck Haines and the Haskell Board of Regents increasingly voiced their opinions and perspective on the project. Haskell and its allies altered the debate by posing questions about environmental

justice and the historical significance of the Baker Wetlands to Native Americans.

The environmental justice movement has sought recognition for the social inequalities perpetuated by an overabundance of "environmental hazards or undesirable land uses in minority-populated and low-income areas."<sup>79</sup> It charges that insufficient regulatory processes exist to prevent these undesirable outcomes. In this sense, the creation of the Environmental Protection Agency and National Environmental Policy Act in the 1960's was not just an environmental movement, but offered the potential for, "a hybrid between the civil rights movement and social justice concerns."<sup>80</sup> For this reason, attention to socioeconomic conditions and race were built into the National Environmental Policy Act process.<sup>81</sup> In the case of the South Lawrence Trafficway, opponents have capitalized on these possibilities to build a grassroots campaign over environmental issues and expanded their platform to address serious questions of civil rights.

Since the National Environmental Policy Act prescribes a process and is not in the control of a regulatory agency, it cannot on its own ensure environmental protection for minorities. Generally, however, it offers a means to stall a project until a more comprehensive Environmental Impact Statement can be completed. Historically, when development is proposed on/in indigenous lands, it has been a question of *when*, and not *if* the development will

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<sup>79</sup> Lynn, 225.

<sup>80</sup> *Ibi*, 224.

<sup>81</sup> Federal agencies are required, under NEPA to considering the culture and affects that a proposed project will have on minorities when drafting an Environmental Impact Statement.

occur. In the vast majority of legal cases regarding tribal nations and development projects that threaten their culturally valuable lands, the courts ultimately sided with developers.<sup>82</sup> Even in the face of this likely result, anti-trafficway forces used the tactics the law offered. Beginning in 1990, Haskell argued that questions of environmental justice were not sufficiently addressed in any of the developer's documents thus far, and the majority of their protest centered on this debate. This can certainly be seen in the case of the South Lawrence Trafficway, where Haskell demanded more intensive studies to be completed, even as the Kansas Department of Transportation was building the first nine miles of the bypass.

By the 1990s, the federal government made additional efforts to prioritize environmental justice, with President Clinton's Executive Order 12898. This order required all federal agencies to

... Make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations...<sup>83</sup>

This order was not "judicially enforceable," but a procedural order similar to NEPA that demanded further accountability for environmental justice concerns by governmental agencies. Haskell's concerns over environmental justice centered on a disproportionate

amount of noise and traffic near the school and sacred areas such as the Medicine Wheel and sweat lodges, health and sanitation problems through pollution and sewage, and an overall misunderstanding by developers of "our identity, our spiritual beliefs and our cultures."<sup>84</sup>

A second legal basis for those seeking environmental justice is the National Historic Preservation Act of 1966, which could potentially protect culturally significant lands by adding them to the National Register and thereby protecting them from development. Haskell requested that a study be performed to include the Baker wetlands in the National Register of Historic Places. Beyond securing their legal rights within the environmentally oriented National Environmental Policy Act, Haskell and the Wetlands Preservation Organization also argued that their claim to the Baker wetlands was a historical one. However, the National Historic Preservation Act is similar to the National Environmental Policy Act, in that it is a process that requires agencies to consider their impacts on historic places, and does not, "[impose] any legal obligation to actually mitigate adverse effects on the environment."<sup>85</sup>

Haskell had a long and troubling history on which to found its claims. Founded in 1887, the school was known as the United States Industrial Training School, functioning as a boarding school, which taught students grades 1-5. In 1890, the school became the Haskell Institute. Its history traced an era of attempts to force assimilation on Native Americans. In a document prepared to

<sup>82</sup> Ibid, 227.

<sup>83</sup> Executive Order No. 12,898, 59 Fed. Reg. 7,692 (Feb 11, 1993).

<sup>84</sup> "Haskell and the South Lawrence Trafficway Facts," (unpublished pamphlet), 1997. 8.

<sup>85</sup> Lynn, 240.

support its claims regarding the historical significance of the wetlands, the group noted that, “according to the Indian traditions, sacred places are not declared by humans, but rather make their sacredness known to us through our experiences. The Wetlands area is considered sacred because it served as a critical place of refuge for Indian children, it now holds the physical remains of many of the children who died at Haskell, and it performs the natural function of purification.”<sup>86</sup> Recalling a history of abuse and stifled spirituality, members of the school today honor these ancestors: “We are reminded of them when we pray and meditate at the Medicine Wheel and the Haskell-Baker Wetlands.”<sup>87</sup>

Beginning in the early 1990’s community interest in the South Lawrence Trafficway grew substantially. Originally appealing primarily to environmental and neighborhood interest groups, the broader community gradually became involved in the polarizing debate. Throughout the 1980’s, environmentalists and concerned citizens raised awareness and gained national attention for their cause, even if the county’s vote on the bond issue in 1990 suggested that the community at-large favored the completion of the trafficway. Haskell’s entrance into the controversy augmented arguments by these interests groups, and strongly aided their cause. During this time, a new generation of younger environmentalists, students from the surrounding schools joined forces to create the Wetlands Preservation Organization. Arguably, without Haskell’s vocal protests against the bypass

beginning in the 1990’s, the eastern end of the trafficway would have been built a decade ago.

Members of the Haskell community proved early on that they understood the nuances of the National Environmental Policy Act and their legal savvy (directed by lawyers Chuck Haines and Bill Ward) protected their land throughout this era. Between 1990 and 1996, Haskell successfully protested and stalled the project through a number of prepared statements, legal battles and physical and artistic protests. Haskell entered the debate over the wetlands shortly after the *Final Environmental Impact Statement* was released to the public, in 1990. Frustrated over a lack of representation in the *Environmental Impact Statement*, representatives of the school demanded a *Supplemental Environmental Impact Statement* that would address the cultural and historical significance of the Baker Wetlands to the large number of tribes represented by Haskell Indian Nations University, and offer alternative route options, including a “No Build” alternative. In 1994, the Federal Highway Administration prepared the *Draft Supplemental Impact Statement*, which was released to the public for comment in 1995.

While Haskell fought hard to achieve representation in any new documents or Environmental Impact Statements, the developers—from the Federal Highway Administration to the city and county commissions and city planners—adapted their approach very little during this era. Although the Federal Highway Administration and Kansas Department of Transportation followed the procedures of the National Environmental Policy Act in creating the *Draft Supplemental Environmental Impact Statement*, they made little effort to

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<sup>86</sup> “Haskell and the South Lawrence Trafficway Facts,” 1.

<sup>87</sup> Students and alumni of Haskell Indian Nations University, *Interconnectedness*. 1997. 4.

collaborate or compromise with the bypass's opponents, and Haskell argued often that their efforts were not thorough. As with earlier lawsuits directed at Douglas County, the lawsuits from this era suggest that major parties involved in the controversy opted to use loopholes to achieve their goals rather than attempting a meaningful dialogue with their opponents. Furthermore, new city planning documents, aimed at directing growth in Lawrence, treated construction of the bypass as an inevitable given, following the approach and passive language of previous city planning documents.

This era of the controversy produced extensive paperwork. The large number of legal battles, written arguments, and various documents produced by the NEPA process, and city-planning documents can be overwhelming. For this paper's purposes, my analysis will focus on two major documents, one lawsuit, and one artistic protest in an attempt to sketch a broader image of the community and their values during this era, as well as track the means by which environmentalism and environmental justice fused to successfully delay construction attempts by developers. The documents analyzed include *Interconnectedness* (1997), Haskell's response to the 1990 *Final Environmental Impact Statement* and *Draft Supplemental Environmental Impact Statement* of 1995. *Interconnectedness* was produced by students and faculty of Haskell and is the most comprehensive and tangible position-statement by Haskell. This chapter also discusses *Horizon 2020* (1993), a collaborative effort between business, city planners, and citizens to address planned growth in Lawrence and Douglas County, which replaced *Plan '95*. It depicts the county's

future plans for the growth of Lawrence, and is an important reflection of city planning and political priorities in the new era of the South Lawrence Trafficway debate. These two documents were selected because they reflect the position of both Haskell and Douglas County on the South Lawrence Trafficway in a comprehensive and informative manner. *Lawsuits and the Supplemental Environmental Impact Statement of 1995*

After the release of the *Final Environmental Impact Statement* in 1990, environmentalists and members of Haskell expressed dissatisfaction over the document. Haskell's Board of Regents requested the creation of a more comprehensive study, in the form of a Supplemental Impact Statement. Complying with rules of the National Environmental Policy Act, Federal Highway Administration, the Kansas Department of Transportation and Douglas County released the much-anticipated *Supplemental Environmental Impact Statement* to the public in October 1995. At the request of the Haskell Board of Regents, this document sought to answer questions relating to the Baker Wetland's spiritual and historical significance, and offered three alternative road options on 31<sup>st</sup>, 35<sup>th</sup> and 38<sup>th</sup> streets, as well as a "No-Build" option.<sup>88</sup>

During the 45-day comment-period, in which the public and officials have the opportunity to offer suggestions, the writers of the *Supplemental Environmental Impact Statement* decided to break the project into two sections: the western leg west of Highway 59, and the contentious eastern leg. Following this

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<sup>88</sup> Federal Highway Administration, Kansas Department of Transportation, Douglas County, *Draft Supplemental Impact Statement*. October 1995.

decision, Federal Highway Administration attempted to “defederalize”<sup>89</sup> construction of the eastern leg, and published a Notice of Intent to leave the project. A later document produced by the Federal Highway Administration defends its decision as such:

Given the fact that all federal funds allocated for the project had been spent on construction of the western leg of the South Lawrence Trafficway, and based on information from KDOT that they did not anticipate seeking additional Federal funding, Federal Highway Administration determined that the eastern leg of the South Lawrence Trafficway was no longer Federalized and that their continued participation was no longer appropriate or necessary.<sup>90</sup>

This seemingly innocent decision had deeper implications: without federal funding or the presence of a federal entity, the rules of the National Environmental Policy Act would no longer apply, and the *Supplemental Environmental Impact Statement* would no longer be required to continue construction on the eastern leg.<sup>91</sup>

This decision caused uproar among the trafficway’s opponents. A coalition of environmentalists and Haskell students sued in federal courts in 1997. In

*Ross vs. Federal Highway Administration*, the court sided with the plaintiff, arguing that the project could not be broken up, and on appeal sided again with the plaintiff adding that the project was too far advanced to turn into a local project, stating, “[t]he federal nature of the trafficway was so pervasive that the Kansas authorities could not rid the project of federal involvement simply by withdrawing the last segment of the project from federal funding.”<sup>92</sup> The defendants appealed the decision on multiple occasions, but the verdict remained, and Federal Highway Administration maintained its oversight position until the release of the *Supplemental Environmental Impact Statement*. While the legal questions were different, this lawsuit hearkened back to *Blevins vs. Douglas County* in 1987, in which county officials were initially found to have used a loophole to circumvent the potential public opposition and thereby speed by construction of the project. The result of that case was favorable for the County in the end, but it is significant to note that those groups in charge of construction did not much alter their habits even after Haskell entered the debate. As proponents of the road criticized environmentalists for using the courts to delay, environmentalists sought to show that pro-road forces were also manipulating the law to achieve their ends.

As Dolph Simons, Jr. pointed out all those years ago, threatening or pursuing a lawsuit was one of the most direct and successful means for environmentalists to stall a project. Native Americans, too, have a somewhat less-successful but still relevant litigious history in matters of

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<sup>89</sup> *Ross vs. Federal Highway Administration*, (10<sup>th</sup> Cir. 2001). vLex.com.

According to the judges of the 10<sup>th</sup> Circuit, “defederalized” in this case meant, “redefined as an independent state project.”

<sup>90</sup> Federal Highway Administration, Kansas Department of Transportation, “Draft Section 4(f) Evaluation.” November 2006.

<sup>91</sup> *Ibid*.

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<sup>92</sup> *Ross vs. Federal Highway Administration*, (10<sup>th</sup> Cir. 2001).

environmental justice.<sup>93</sup> This legal battle also represented the same ideological battle over the South Lawrence Trafficway that began in the 1980's. The names and parties involved had changed, but the expectations of developers and the tactics used by environmentalists remained much the same.

#### *Interconnectedness and the Medicine Wheel*

Even as the Wetlands Preservation Organization was working their way through the courts, a group of Haskell alumni, faculty and students published their first and largest statement against the South Lawrence Trafficway. Entitled, *Interconnectedness*, this document was a follow-up to, *All Things Are Connected: Response to the 31st Street alignment, South Lawrence Trafficway, Lawrence, Kansas* (1994). *All Things are Connected* was submitted to the Federal Highway Administration as a response to the 1990 *Final Environmental Impact Statement*, and *Interconnectedness* built on these arguments and also included a criticism of the 1995 *Draft Supplemental Environmental Impact Statement*. *Interconnectedness* lambasted both assessments as, "[u]njustified, discriminatory, misleading and fail[ing] to adequately address the Native American spiritual and cultural concerns."<sup>94</sup>

*Interconnectedness* is a two-inch thick, plastic bound document released by Haskell faculty, alumni and students to the Federal Highway Administration. Copies were also given to the Lawrence Public Library and Haskell's Tommaney Library for public review. Representing

the voices of 160 different tribes, *Interconnectedness* includes sections on academic issues, past and present, spiritual and cultural issues, and concerns of environmental justice presented by the South Lawrence Trafficway. The document also includes an appendix with a series of letters written by many different Native American tribes across the country to indicate that this document had tribal support. Another section highlights the "misuse of the media and public forums," offers a list of alternatives that would minimize impacts to the wetlands. This document also includes an annotated history of the university and its wetlands.

As had been true in the 1980's, when national environmental awareness found expression in the debate over the South Lawrence Trafficway, the growth of a national environmental justice movement also coincided with events in Lawrence. Executive Order 12898 indicated that national concern over environmental justice, as well as Native American culture and history was on the rise in the 1990's. Haskell's somewhat delayed entrance into the debate over the South Lawrence Trafficway coincided with this resurgence of national and academic interest in indigenous culture and history. The writers of *Interconnectedness* referenced this resurgence in a section entitled, "A New Era." In this section, the writers placed Haskell in this context, stating that, "the institution began a process of redefinition which embraced and validated the significance of Native American cultures and which reaffirmed the values of these cultures."<sup>95</sup> The writers argued that this reaffirmation was "appropriate and timely," given "the devastation incurred

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<sup>93</sup> See Lynn, pg. 227 for a list of recent cases that indicate the low success rates of cases where Native Americans sued over questions of environmental justice.

<sup>94</sup> *Interconnectedness*, 1.

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<sup>95</sup> *Ibid*, 49.



by Native American as the result of the massive cultural oppression and the ensuing cultural loss.”<sup>96</sup> By scholarly documentation of the history and cultural significance of the Haskell-Baker Wetlands, Haskell presented an authoritative account of a previously ignored perspective on the wetlands.

*Interconnectedness* presented a history of the wetlands that predated the creation of the Haskell Boarding School in 1887, recalling the dislocation of many Native American tribes to what is today the Haskell-Baker Wetlands with the Indian Removal Act of 1854. This dislocation represented a conflict not so different from the one they were currently experiencing; at the center of the Indian Removal Act of 1854 existed, “...struggles over the promotion of towns, the removal of the Indians and the opening of their reserves to purchase, the selection of choice land claims and the selection of railroad routes.”<sup>97</sup> The writers of *Interconnectedness* revealed the history behind their present struggle, in which urban and transportation growth slowly and systematically consumed their land. By expanding the history of Haskell beyond its position as an institution, *Interconnectedness* highlighted the ancestors of Haskell students and alumni, and their experiences with Western ideas of progress and urban growth.

As *Interconnectedness* suggests, Haskell did not oppose the South Lawrence Trafficway as a whole; rather it was an affirmation that the institution and its people would not be subjected once again to the expectations of developers. Specifically, *Interconnectedness* argued that the 1990 *Final Environmental Impact Statement* did

not adequately address Haskell’s position in the construction of the South Lawrence Trafficway. The 1990 *Final Environmental Impact Statement*, it noted, proposed only one road option, 31<sup>st</sup> street. Since the land was owned by Baker University, the writers skirted the subject of Haskell altogether, noting only that Haskell conducted powwows on the land north of 31<sup>st</sup> Street. *Interconnectedness* called for a *Supplemental Environmental Impact Statement* that would address the cultural significance of the Haskell-Baker wetlands, and study alternative routes that would impact their land less: “Haskell is not opposed to the SLT,” it announced, “we are opposed to the 31<sup>st</sup> street alignment that will intersect our campus and will devastate our culture, spirituality, academic programs and future development. It is our mission to protect the integrity of our campus for future generations of Native peoples seeking higher education.”<sup>98</sup>

Those who had fought to preserve the Elkins Prairie as well as teachers, scientists, and those who participated in the Agnes T. Frog campaign found an ally in Haskell. As members of Save the Elkins Prairie stressed the value of virgin prairies as places for learning and experience, *Interconnectedness* addressed the value of experience-based learning to American Indians, stating that, “this is why the Haskell-Baker Wetlands area is so very important to the American Indian students of Haskell. It is a primary place of our education.”<sup>99</sup>

*Interconnectedness* related Native American spirituality to its Western equivalent in an attempt to reveal that as American Indian traditions and religion are different from its Christian

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<sup>96</sup> Ibid, 50.

<sup>97</sup> Ibid, 18.

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<sup>98</sup> Ibid, ii.

<sup>99</sup> Ibid, 2.

counterpart, their purpose and values are the same. The document argued that Native American ceremonies were as spiritually valuable as any religious prayer, and the location where these ceremonies take place were no less significant than a church or temple: “Each language, prayer and song are important, whether one prays in a church on Sunday, speaks to a fire at the Medicine Wheel or meditates or prays in the Wetlands. It is the fact that each of us communicates to the Greater Power, the Creator in the ways we were taught were proper that is important.”<sup>100</sup> The Medicine Wheel became an important symbol in educating the community about Haskell’s spiritual connection to the landscape, of which the authors state, “With... recognition of the complexity of creation and the Creator’s power comes the obvious realization that we are but one part of the natural world, not necessarily a privileged part or even the only persons inhabiting the earth.”<sup>101</sup>

The Medicine Wheel Prayer Work, based on the Sacred Circle of Life, was designed by students and Haskell instructors Leslie Evans and Dan Wildcat, and created by noted crop artist Stan Herd in 1992.<sup>102</sup> This land, simultaneously artwork and center of worship became a means of expressing Native American spirituality to a wide audience within the community. The work includes a ceremonial fire pit at the center, with four lines that radiate out in the cardinal directions, leading to a bear claw to the west and a spirit bird to the east, presented by the writers of *Interconnectedness* to be, “as significant as the crucifix, the altar, the candle and the

confessional,”<sup>103</sup> to a Western place of worship. Near this site, sweat lodges and stomp dances often occur, practices that Haskell argued would be greatly disrupted by the intrusion of a four-lane highway. While the creation of the Medicine Wheel coincides with Haskell’s involvement in the South Lawrence Trafficway controversy, it was not created as a statement against the project rather it was created specifically for spiritual use. It should be noted, however, that the Medicine Wheel and Haskell’s protests of the South Lawrence Trafficway both stemmed from a movement to reaffirm Native American spirituality at Haskell Indian Nations University, as discussed in the chapter “A New Era,” in *Interconnectedness*.



**The Medicine Wheel, by Stan Herd and Haskell Indian Nations University students, faculty and tribal elders, 1992.**

#### *A New Plan for the City: Horizon 2020*

City planning documents from this era indicated that the attitudes of city and county institutions did not change much despite the mobilization of

<sup>100</sup> Ibid, 6.

<sup>101</sup> Ibid, 38.

<sup>102</sup> “Haskell and the South Lawrence Trafficway Facts,” 1.

<sup>103</sup> Ibid, 1.

environmentalist groups and Haskell. The same year that Stan Herd and his group of Haskell students designed and created the Medicine Wheel, the city released its newest plan for Lawrence and Douglas County. City and county planners drafted and prepared extensive studies for Lawrence's new growth guide, *Horizon 2020: The Comprehensive Plan for the City of Lawrence and Unincorporated Douglas County* (1992). *Horizon 2020* reflected a deeper concern for the ecological value of both prairies and riparian areas however it lacked suggestions on how to resolve the ever-growing list of concerns regarding the bypass and lacked teeth for protection of habitat or significant places.

The drafting of *Horizon 2020* encouraged community collaboration by holding forums, and setting up subcommittees to discuss a range of priorities. Subjects discussed included rural and urban land use, transportation, education, environment and natural features. By including community members in the various subcommittees, *Horizon 2020* represented a more holistic approach to city planning than earlier documents yet it ultimately contained the same language and expectations of those documents when it came to growth. Produced by Chicago consulting group, Trkla, Pettigrew, Allen & Payne, Inc. *Horizon 2020* sought to promote "managed growth," while considering the impact of development on other facets of Lawrence society. Although this document addressed growth within the entire Douglas County area, as the highest-populated city in the county, Lawrence was the focus of its study.

This document provides greater consideration for the local ecology and a more intensive inventory of Douglas County's natural areas, including soils, flood plains, tallgrass prairies, wetlands,

forests, slope, and threatened species. The inclusion of soil maps indicated a more vertical consideration of the ecological landscape, topographic maps highlighted flood plains and watershed maps served to further indicate that the county better understood the crucial ecological value of riparian areas: "While areas in proximity to lakes, rivers and streams present attractive sites for development, they are also often areas most severely impacted by environmental constraints..."<sup>104</sup> Consideration is made to the ecological values of wetlands near the proposed bypass, as the document states, "Steps should be taken to plan for the protection of natural lands along the K-10 development areas and around Lawrence because significant growth is predicted there," however the writers did not offer specific solutions and processes for protecting natural land in these areas of future growth.<sup>105</sup> The passive language of this document recalled the semantics of the 1969 *Guide for Growth*, which hailed Lawrence's "natural features," without suggesting how to promote, protect or utilize these features.

The authors often referenced the areas near the proposed South Lawrence Trafficway in the Transportation section, but rarely referenced to the road directly. The expectations that the road will be built, however, remained evident throughout the text. When discussing the city's Transportation Plan, for example, the document stresses two main plans: the improvement of pedestrian, bicycle and public transportation access, and the collaboration between the city and county to, "pursue planned transportation

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<sup>104</sup> Trkla, Pettigrew, Allen & Payne, Inc., "Lawrence-Douglas County Horizon 2020: background studies." February, 1993. 155.

<sup>105</sup> Ibid.

improvements which add substantial capacity to the street and roadway system... [Including] the completion of a circumferential road system around Lawrence.”<sup>106</sup> Other than these brief references, the South Lawrence Trafficway received very little attention. This may suggest that city planners viewed the project as inevitable, or that the city felt responsible for addressing opportunities for planned growth rather than discussing the project.

The lack of references to the South Lawrence Trafficway, a project that the city and county had pursued for so long, also indicates the controversy embedded in the project. In discussing broad approaches toward growth, rather than specifics, the writers of *Horizon 2020* avoided the controversy created by previous city planning documents, by avoiding the subject completely. By stressing planned growth throughout the text, the construction of the five eastern miles of the South Lawrence Trafficway could be inferred as part of this policy without directly referencing any terms that could elicit controversy.

In this new era of debate over the South Lawrence Trafficway, environmentalists expanded their position on the Haskell Baker Wetlands beyond ecological and educational value to include the historical and spiritual values of a community previously unheard in the debate. It is fitting that the Lawrence community at large, with its history of grassroots preservation wanted to include Haskell’s history in their struggle, and arguably, this union stalled

the path of the South Lawrence Trafficway for another decade. In contrast, the federal and state agencies involved in the project maintained the assumptions of the 1980’s, and gave into to Haskell and the Wetland Preservation Organization’s demands slowly and stubbornly. New planning documents for the future wisely avoided the subject, however the assumptions remain embedded in the language of *Horizon 2020*.

As with the earlier events of the South Lawrence Trafficway controversy, the 1990’s represented a clash between the expectations of urban development and the efforts of interest and minority groups to stall said development. During the 1980’s, preservation efforts focused on the environmental consequences of development, but by the 1990’s, the values of South Lawrence Trafficway opponents grew to include spiritual meaning, educational merit and historical significance. In *Interconnectedness*, Haskell argued that these values all existed simultaneously, and asked the agencies involved in the construction of the road to consider these issues before continuing with development. While Haskell students and faculty erected the Medicine Wheel as a symbol of their spiritual connection with the world, city planners released their newest plan for the city, *Horizon 2020*. While this document considered the “environmental qualities” of Lawrence, its passive language and omission of a discussion of the South Lawrence Trafficway and its impacts to the community indicate that the battle over the road had done little to alter the attitudes of developers.

## EPILOGUE

At Lawrence’s Earth Day environmental panel in 1970, geography

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<sup>106</sup> Lawrence-Douglas County Metropolitan Planning Office, *Horizon 2020: The Comprehensive Plan for the City of Lawrence and Unincorporated Douglas County*. May 22, 1996. 36.

professor Duane Knos made a prophetic statement that would characterize the next several decades of environmental conflict in Lawrence. Knos claimed that Americans would have to approach and frame environmental problems in new ways before solutions could be achieved: "The way we see the world is going to have to change," he challenged the audience, "We are going to have to change ourselves, and I don't know if we've got the guts to do it."<sup>107</sup> The story of the South Lawrence Trafficway exemplified and continues to demonstrate this statement today. The business community enjoyed the status quo of unchecked development provided by the local government, and neither group made concentrated efforts to consider environmental problems beyond those required by law. Environmentalists and members of Haskell Indian Nations University, on the other hand, approached the protection of the Elkins Prairie and the Baker Wetlands by working within the limitations of the National Environmental Policy Act, attempting to sway political officials and the public into caring about environmental protection, and finally going to court when these avenues did not produce the results they wanted.

As the current status of the debate indicates, the Lawrence community indeed did not, "have the guts" to impact change, and could not come to a consensus about the South Lawrence Trafficway. There are essentially two phases in the construction of the road, which coincide with Haskell's participation in the debate and the Federal Highway Administration's departure as oversight committee for the

project. The issue became increasingly litigious and in 1998, one year after the western segment of the road opened to the public, the United States District Court issued an injunction to stop construction until the *Final Supplemental Impact Statement* was completed. The project remobilized several years later without the oversight of the Federal Highway Administration, and by 2003, the United States Army Corps of Engineers in conjunction with the Kansas Department of Transportation released a *Final Environmental Impact Statement* for the eastern leg of the project. During this era, Haskell and environmental organizations focused their attention on alternative route selection south of the Wakarusa River and would not directly impact Haskell's portion of the wetlands or their sweat lodges.

Over a decade after the western leg was built, the debate over the South Lawrence Trafficway began to sound like a broken record; once again, the agencies involved in the project were dragging their feet and once again, the opponents felt underrepresented in the Environmental Impact Statements. In January 2012, the Prairie Band Pottawattamie Nation, along with the Wetlands Preservation Organization and other Lawrence environmental organizations filed an appeal in the 10th Circuit Court of Appeals in Denver, Colorado. The plaintiffs stated that the ongoing Environmental Impact Statement process insufficiently considered questions of environmental justice and did not accurately assess alternative routes, especially the 42<sup>nd</sup> street route that would run south of the Wakarusa River. Mike Caron of Save The Wakarusa Wetlands Inc. characterized the appeal as the most effective means of ensuring environmental justice protection, stating,

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<sup>107</sup> "Environment In Spotlight at KU Event," *Lawrence Journal World*. April 22, 1970, p. 2.

“Federal NEPA standards were put in place explicitly to protect minorities from tyranny of the majority. They are the heart of our nation’s protections against environmental injustices.”<sup>108</sup> This is a very true statement however it does not address the inherent limitations of the federal standards and neglects the fact that despite a 24-year struggle, the National Environmental Policy Act has not provided any solutions to the environmental controversy of the South Lawrence Trafficway.

In the end, the debate over the South Lawrence Trafficway highlights the inadequacies of our federal processes and agencies that protect the environment, which cannot eternally stand up against classic American liberalism and a national identity that equates expansion and growth with national pride. The National Environmental Policy Act remains a federal regulatory process without teeth; while it has enabled environmentalists and cultural minorities to stall development so far, it alone does not have the authority to protect environmentally, culturally and historically significant landscapes from the long-arm of development. In conclusion, the South Lawrence Trafficway debate cannot remain in legal limbo forever. Who’s to say how long the road will be swamped in legal battles, and what will its opponents do after this approach has run its course?

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